

NASOP QUESTIONS

Question 1: Can a State request review of a proposed State Organic Program (SOP) before all the statutory and regulatory rules have been changed? For instance, can a State specify its intent to adopt legislation or rules in its request for approval, rather than having those statutes or rules finalized?

Response: A State has two options: (1) It can submit a final SOP to USDA for approval; or (2) It may submit to USDA, a draft SOP for review prior to finalization of statutes, regulations, or procedures. When this option is used, USDA will provide feedback to the State regarding any changes necessary to receive approval. A State can then use the feedback to finalize its SOP. The SOP would, then, be submitted to USDA for approval.

Question 2: Can a State require registration of all certifying agents operating within the State?

Response: Yes; provided that the registration program does not discriminate against the certifying agents.

Question 3: Can a State with an approved State Organic Program (SOP) review the operations of certifying agents operating within the State?

Response: Only States with approved SOPs may review and investigate complaints of noncompliance with the Act or regulations concerning accreditation of certifying agents operating in the State (See section 205.668(c)).

Question 4: Can a State require certifying agents operating within the State to comply with the approved State Organic Program's (SOP's) more restrictive requirements?

Response: Accredited certifying agents operating within a State with an approved SOP must comply with the SOP's more restrictive requirements. A violation of the State's approved more restrictive requirements is a violation of the National Organic Standards (NOS). Only the USDA may take enforcement action against an accredited certifying agent for violating the NOS. States with approved SOPs may review and investigate complaints of noncompliance and report their findings to the NOP for enforcement action (See section 205.668(c)).

Question 5: When is a State considered to have a State Organic Program (SOP)?

Response: A State is considered to have an SOP when it receives USDA approval. To receive approval, a proposed SOP must meet the National Organic

Standards, receive approval for any identified more restrictive requirements, and contain noncompliance, mediation, and appeals procedures that meet the requirements of USDA. The basis for the recommendation to approve or disapprove will be based on compliance with the requirements of Sections 205.620 through 205.622, 205.661 through 205.663, 205.668, and 205.680 and 205.681 of the NOS (7 CFR 205.620-.622, 205.661-.663, 205.668, and 205.680-.681).

Question 6: Who is responsible for handling a U.S. District Court appeal of a State's final decision.

Response: The appeal is on a State action, and the State is responsible for defending its action.

Question 7: What discretion, if any, does a State Organic Program (SOP) have in handling an appeal of an enforcement action initiated by an accredited certifying agent?

Response: None. Approved SOPs are required to handle all appeals of enforcement actions initiated by certifying agents against certified operations operating within the State.

Question 8: Can a State Organic Program (SOP) include additional enforcement provisions, such as authority to issue cease and desist orders, obtain injunctions to stop the sale of noncompliant products, or summarily suspend certifications?

Response: A State may request approval of an SOP that includes more restrictive enforcement requirements that do not deny due process.

Question 9: Will an approved State Organic Program (SOP) be responsible for revoking the certification of a certified operation based in foreign countries?

Response: When a certified entity operates in multiple locations and one of those locations is within the jurisdiction of an SOP, the State is responsible for enforcing compliance by that portion of the certified operation.

Question 10: If a certified producer or handler fails to meet the continuation of certification requirements and contests a proposed revocation of certification, can a State with a State Organic Program (SOP) stop that entity from selling its product as "organic" prior to completion of the appeals process?

Response: No. A stop sale before completion of the appeals process would be a denial of due process.

